

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1901.

No. 1115.

102

UNITED STATES, APPELLANT,

vs.

EMMA J. FRIZZELL, COMMITTEE OF JOHN H. RIGHTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 17, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1901.

No. 1115

UNITED STATES, APPELLANT,

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EMMA J. FRIZZELL, COMMITTEE OF JOHN H. RIGHTER.

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In the Court of Appeals of the District of Columbia.

UNITED STATES, Appellant,
vs.
EMMA J. FRIZZELL, Committee of John H. Righter. } No. 1115.

a Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. No. 8904. In Equity.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition for Appointment of Committee.*

Filed February 27, 1884.

In the Supreme Court of the District of Columbia.

In the Matter of JOHN H. RIGHTER, Lunatic. Eq. No. 8904, Doc. 23.

To the honorable justice of said court, holding an equity court in and for said District of Columbia:

The petition of Annie Righter respectfully shows to the court and states:

1. That she is the wife of John H. Righter, and was married to him by Rev. Mr. Owens, pastor of Mt. Zion M. E. church, at his residence, on S street between 14th and 15th Sts., in the city of Washington, in said District, December 24, 1880, and lived with him until May, 1882, in said Washington, when he became insane to such an extent that on May 9th, 1882, he was taken to the Government Asylum for the Insane, of which institution he has ever since been and still is an inmate, as will more fully appear by reference to the letters to your petitioner of the Secretary of War and of the superintendent of said insane asylum, marked Exhibits "A" and "B" and filed herewith.

2. That the said John H. Righter, at the time he became insane, was a private in the Signal Corps of the United States Army, having enlisted in March, 1879, for five years, and was discharged, as your petitioner is informed and believes, in July, 1882, and that there is arrears of pay and clothing money due him from the United States,

the amount of which she does not know, and which, so far as she knows or is advised, is all the money due him and all the property or means which he possesses. When he became insane they

2 were living with her parents, & he had saved nothing from his pay & had no property, not even household furniture.

3. That your petitioner has no child living, but there is one child, Charles H. Righter, six years of age, the son of said John H. Righter by a former wife, and said child is now living with and cared for and supported by your petitioner in said Washington, where she resides with her parents, assisting them in their housework and receiving from them her only means of support and the only means of supporting the said child.

Wherefore and because there is no one legally authorized to apply for and draw the money due her said husband on account of his services in the army, as aforesaid, your petitioner prays that she may be appointed committee for her said husband, with authority to collect and receive whatever may be due him, with such other rights and powers as pertain to such office, and for such other or further relief in the premises as shall seem meet to the court; and will ever pray, &c.

ANNIE RIGHTER.

S. R. BOND,
Solicitor for Petitioner.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have heard read the petition by me above subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ANNIE RIGHTER.

3 Subscribed and sworn to before me this — day of February, 1884.

— — —.

Endorsed: Let this petition be filed & prosecuted *in forma pauperis*. Feb. 27, 1884. McArthur, justice.

4 *Order Appointing Committee.*

Filed July 6, 1886.

In the Supreme Court of the District of Columbia, Sitting in Equity,
6th July, 1886.

In the Matter of JOHN H. RIGHTER, Lunatic. 8904, Eq. Doc. 23.

This cause coming on to be heard upon the petition of the Commissioner of Pensions and the rule on Annie Righter, committee of said lunatic, and it appearing to the satisfaction of the court that the said Annie Righter is an unfit person to be longer committee, as

aforesaid, it is thereupon this 6th day of July, 1886, ordered that said Annie Righter be, and she is hereby, discharged from serving longer as committee, as aforesaid, and that Mrs. Emma J. Frizzell be, and she is hereby, appointed committee of the said John H. Righter, with all the powers and rights and duties belonging to such position: Provided, that before entering upon her duties as such committee the said Emma J. Frizzell file a bond in this case with surety, to be approved by the court, in the sum of one thousand dollars.

CHARLES P. JAMES, J.

Memorandum.

October 4, 1886.—Bond of Emma J. Frizzell, committee, filed.

5

Account of Emma J. Frizzell, Committee.

Filed Apr. 21, 1894.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Orphans' Court.

In re Estate of JOHN H. RIGHTER (Insane).

DISTRICT OF COLUMBIA, ss :

Emma J. Frizzell, being first duly sworn according to law, deposes and says that she is the committee of John H. Righter, insane, and was duly appointed such committee by this honorable court in July, 1886, and affiant further deposes and says that the foregoing annexed itemized account represents all and singular the receipts by her on account of said estate and the expenditures by her on same account; that said account is correct and true, and that each and every item therein mentioned is correct and true, and that said account is inclusive of all charges and receipts to date.

EMMA J. FRIZZELL.

Subscribed and sworn to before me this 20th day of April, A. D. 1894.

[SEAL.]

EMMA M. GILLETT,
Notary Public.

6 *The Estate of John H. Righter, Insane Pensioner, in Account with Emma J. Frizzell, His Committee, from June, 1886, to the — Day of —, 1894.*

DR.

June.	Car fare to & from Washington, five trips.....	15 00
	Street-car fare, 75; luncheon, 1 25.....	2 00
	To Uncle George for infant son's board.....	5 00
	“ straw hat.....	50
	1 pair shoes, 1.95; mending shoes, 50.....	2 45
July.	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00
Aug.	2 pairs hoes, 25; 2 shirt waists, 60.....	85
	Spelling book, 25; picture book, 18.....	43
	Cash at picnic.....	25
		<hr/> 51.48

	To care of infant son, including board, laundry, &c.,		
	for 1 mo	25 00	
Sep.	" " " " ..	25 00	
1886.			
Oct. 13th.	To Chas. S. Moore, counsel fee....	50 00	
	To care of infant son, including board, laundry, &c.,		
	for 1 mo	25 00	
Nov.	" " " " ..	25 00	
Dec.	To 1 overcoat.....	5 00	
	To proving voucher twice on account of error by		
	dep't at Washington, D. C.....	1 00	
	Court charges, 50; mail, 4..	54	
	To care of infant son, including board, laundry, &c..	25 00	
		<hr/>	181.54
			<hr/>
			233.02

DR.

7	Amount forwarded.....		\$233 02
Dec.	To 2 pairs pants, 1.95; 3 shirt waists, 90.....	2 85	
	2 h'dk's, 20; 1 pair garters, 15.....	35	
	2 pairs drawers, 75; 2 hoes, 25.....	1 00	
	1 pair shoes.....	1 95	
1887.			
Jan.	To care of infant son, including board, laundry, &c.,		
	for one mo.....	25 00	
Feb.	" " " " ..	25 00	
	1 pair boots	1 95	
March.	" proving voucher, mailing, &c.....	78	
		<hr/>	58.88
	To care of infant son, including board, laundry, &c.,		
	for 1 mo.....	25 00	
	Mending shoes, 75; 1 shirt waist, 35.....	1 10	
	2 pants, 1 80; 2 shirt waists, 65.	2 45	
April.	To care of son, including board, laundry, &c., for 1		
	mo.....	25 00	
	1 necktie, 25; medicine, 25.....	50	
May.	To care of son, including board, laundry, &c., for 1		
	mo.....	25 00	
June.	Proving voucher, &c.....	80	
	Shoe blacking & brush.....	30	
		<hr/>	80.15
	To care of son, including board, laundry, &c., for 1		
	mo.....	25 00	
July.	" " " " ..	25 00	
Aug.	" " " " ..	25 00	
Sep.	To proving voucher, &c.....	80	
	Straw hat, 25; 2 pants, 1 75.....	2 00	
	To care of son, including board, laundry, &c., for 1		
	mo.....	25 00	
Oct.	" " " " ..	25 00	
Nov.	" " " " ..	25 00	
	1 shirt waist.....	30	
		<hr/>	153.10
			<hr/>
			525.15

DR.

8	Amount forwarded	525 15
Dec.	To proving voucher, &c.	\$1 33
	Gloves & cap	
	To care of son, including board, laundry, &c., for 1	
	mo.....	25 00
	Expenses in visiting invalid pensioner	3 75
	To care of son, including board, laundry, &c., for 1	
	month.....	25 00
	2 pairs hoes, 50; garters, 25; mittens, 50.....	1 25

1888.			
Jan.	To care of infant son, including board, laundry, &c., for 1 mo	25 00	
March.	“ proving voucher & mailing.....	1 03	
	Mending boots.....	50	
			82.86
	To care of son, including board, laundry, &c., for 1 mo... ..	25 00	
	2 pants, 1.50 ; 4 shirt waists, 1.20.....	2 70	
April.	“ 1 suit clothes	2 50	
	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
May.	“ “ “ “ ..	25 00	
June.	Clothing from Posner Bros.....	1 60	
	Proving voucher & mailing.....	1 03	
			82.83
	To care of son, including board, laundry, &c., for 1 mo.....	25 00	
	Book, 10 ; straw hat, 50.....	60	
July.	To care of son, including board, laundry, &c., for 1 mo.....	25 00	
Aug.	“ “ “ “ ..	25 00	
Sep.	Proving voucher, &c.....	1 03	
	Cash at picnic	25	
	School books, 75 ; bucket, 10.....	85	
	1 coat	1 00	
			78.73
			769.57

9	Dr.		
	Amount forwarded		769 57

Sep.	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
Oct.	“ “ “ “ ..	25 00	
Nov.	“ “ “ “ ..	25 00	
Dec.	Proving voucher, &c	1 03	
	1 pair shoes.....	1 50	
	2 undershirts	1 50	
	Hoes & garters.....	50	
			79.53
	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
1889.			
Jan.	Umbrella, 1 00 ; mending boots, 70.. ..	1 70	
	Cough drops, 5 ; school books, 75.....	80	
	1 suit clothes	3 00	
	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
	Medicine	75	
	1 pair boots	1 90	
			58.15
Feb.	To care of infant son, including board, laundry, &c., for 1 mo ..	25 00	
March.	“ “ “ “ ..	25 00	
	Proving voucher, &c	1 03	
	School books	75	
	Uncle Chas. Righter's expenses in Washington for attention of grave of wife of pensioner.....	3 75	
	1 lot in Graceland Cem.....	5 00	
April.	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
May.	“ “ “ “ ..	25 00	
	Dr. Ware's attendance	1 00	
	Straw hat, 15 ; shoes, 1 75....	1 90	
			113.43
			1,020.68

10

Dr.

	Amount forwarded	1,020.68	
May.	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
June.	“ proving voucher, &c.....	1 03	
	“ care of son, including board, laundry, &c., for 1 mo.....	25 00	
	2 pairs drawers.....	50	
	1 necktie, 25; 3 shirt waists, 90	1 15	
July.	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
Aug.	“ “ “ “ ..	25 00	
	1 straw hat, 50; mend. shoes, 50	1 00	
	Cash, 25; 3 handkerchiefs, 25.....	50	
Sep.	Proving voucher, &c.....	1 03	
	1 tie, 25; hoes, 25; books, 75	1 25	
	3 shirt waists.....	90	
	1 pair shoes.....	1 50	
			\$108.86
	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
Oct.	“ “ “ “ ..	25 00	
Nov.	“ “ “ “ ..	25 00	
Dec.	Proving voucher, &c.....	1 03	
	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
	“ 1 hat, 50; 1 suit clothes, 4 50; boots, 1.95	5 95	
	“ books at school.....	75	
	“ cash, 10; 2 pairs pants, 2.00; mend. boots, 50 ..	2 60	
1890.			
Jan.	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
Feb.	“ “ “ “ ..	25 00	
March.	“ proving voucher, &c.....	1 03	
	School books, 75; straw hat, 12.....	87	
			162.13
			1,291.67

Dr.

11	Amount forwarded.....	1,291.67	
March.	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
	3 pairs hoes, 75; 2 shirt waists, 60.....	1 35	
April.	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
May.	“ “ “ “ ..	25 00	
June.	“ proving vouchers, &c.....	1 03	
	“ 1 pair slippers, 75; 2 pants & hat, 1.65	2 40	
	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
July.	“ “ “ “ ..	25 00	
Aug.	Cash, 25; mend. shoes, 50	1 00	
	Bill at Posner Bros. for clothing	4 97	
	“ car fare to & from Balto.....	1 60	
	“ expenses in Balto.....	45	
			137.80
	“ care of infant son, including board, laundry for 1 mo.....	25 00	
Sep.	“ “ “ “ ..	25 00	
	Proving voucher, &c.....	1 03	
	School books, 75; book satchel, 48	1 23	
Oct.	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
Nov.	“ “ “ “ ..	25 00	

7

12	DR.	1,566.56
	Amount forwarded	1,566.56

13	DR.	
	Amount forwarded.....	1,817.12

Oct.	To care of infant son, including board, laundry, &c., for 1 mo.....	25 00
	1 suit clothes, 5.00; school tuition, 3.00.....	8 00
	Cakes, 10; peaches, 5; gloves, 25; ball, 13.....	53
	Medicine.....	1 50
Nov.	“ care of infant son, including board, laundry, &c., for 1 mo.....	25 00
Dec.	“ “ “ “ “ “ ..	25 00
	Proving voucher.....	1 03
	School tuition	3 00
	Book, 27; boots, 1.95; pants, 1.00.....	3 22

15

DR.

Amount forwarded..... 3,457.40

1893.
Jan.

To care of infant son, including board, laundry, &c.,
for 1 mo..... 25 00

Expenses incurred in placing son in Dr. Waters'
school at Dawsonville, Md.

Traveling expenses..... 9 55
Outfit for school—1 suit clothes 4 50
3 pairs drawers, 1.20; 2 pants, 2.50. 3 70
3 undershirts, 90; ½ doz. hoes, 1.50..... 2 40
6 shirts, 3.00; handkerchiefs, 1.00..... 4 00
Suspenders, 25; shoes, 1.98; overshoes, 45 . . . 2 68
1 box blacking & brush, 50; 1 hat & cap, 1.40... 1 90
1 trunk, 4.75; umbrella, 1.25..... 6 00
1 pair blankets, 5.00; bedspread, 1.25..... 6 25

65.98

Sheets, 1.00; pillow-cases, 50..... 1 50
Comb & brush, 65; 1 hand glass, 50 1 10
Napkins, 75; napkin-ring, 1.00; towels, 1.00.... 2 75
1 pair slippers, 75; wisp broom, 25.. 1 10
Tooth-brush, 15; soap, 10; sundries, 25. 50
Shoe-strings, 5; 1 shoe bag, 20; clothes bag, 20 . 45
1 pair gloves, 1.00; 2 neckties, 50. 1 50
1 purse, 25; stationery, stamps, and cash, 2.00... 2 25

To ½ y'r's care, including tuition, board, &c., at
boardingschool, in advance..... 175 00

1 arith., 50; hist., 1.12; gram., 30; geog., 25; 1
read. & spel'r, 50 2 67
1 copy, 10; tablets and blank book, 25..... 35

March.
April.
May.

“ proving voucher, &c. 1 03
“ settling difficulty at school..... 10 00
1 suit clothes, 4.75; 1 hat, 25; shoes, 2.00 6 90

16

Fare to & from Barnesville, 30; cash, 50.. 80

207.90

3,731.28

DR.

Amount forwarded..... 3,731.28

June.
Aug.

To proving voucher..... 1 03
“ care of infant son, including board, laundry, &c. 25 00
“ mending shoes 55
“ fare to & from Mt. Airy (Camp M) 60
“ Dr. Bolte for extracting tooth 25
“ cash 30

Sep.

“ care of infant son, including board, laundry, &c.,
for 1 mo 25 00
Proving voucher..... 1 03
Necktie, 25; 1 pair shoes, 1.95..... 2 20

Oct.

To care of infant son, including board, laundry, &c.,
for 1 mo 25 00
“ 1 suit clothes..... 5 00

85.96

Nov.

“ care of infant son, including board, laundry, &c.,
for 1 mo 25 00

Dec.

“ proving voucher. 1 03
“ school books 75
“ care of infant son, including board, laundry, &c.,
for 1 mo..... 25 00

1894.
Jan.
Feb.

“ “ “ “ .. 25 00
“ school books 75

	5 pair stockings	1 25	
	Mending shoes .. .	65	
	Gloves, 1.00; necktie, 25.	1 25	
	" care of infant son, including board, laundry, &c., for 1 mo.	25 00	
	" Dr. Bolte for dressing burn	1 00	
	1 hat, 50; 1 pair pants, 1.25.....	1 75	
	School books	75	
	1 pair pants, 75; handkerchiefs, 50....	1 25	
		<hr/>	110.43
			<hr/>
			3,927.67
17	DR.		
	Amount forwarded.		3,927.67
March.	To proving voucher, &c	1 03	
	" care of infant son, including board, laundry, &c., for 1 mo.....	25 00	
	1 pair shoes, 1.98; 4 shirts, 2.00	3 98	
	Tooth-brush, 15; umbrella, 1.00... ..	1 15	
	" car fare in visiting pensioner.....	3 00	
April.	" care of infant son, including board, laundry, &c., for 1 mo.	25 00	
	Necktie, 25; suspenders, 25.....	50	
	Expenses incurred during trip to Washington pertaining to filing a report at equity court....	9 58	
	To commission on am't rec'd at rate of 5 %.....	281 50	
		<hr/>	350.74
			<hr/>
			4,278.40

18

CR.

*The Estate of John H. Righter, Insane Pensioner, in Account with
Emma J. Frizzell, His Committee, from June, 1886, to the — Day of
—, 1894.*

CR.

Am't of pension received, at the rate of \$50.00 per mo., from the — day of —, 1886, to — day of —.....	2,250.00
Am't of pension received, at the rate of \$72.00 per mo., from the — day of —, 1890, to — day of —.....	3,240.00
Interest received on investments.....	136.02
	<hr/>
	5,626.02

19

Bal. sheet.

*The Estate of John H. Righter, Insane Pensioner, in Account with
Emma J. Frizzell, His Committee, from June —, 1886, to the — Day
of —, 1894.*

	DR.	CR.
By total am't rec'd.....		5,626 02
To total am't expended.....	4,278 40	
To bal.....	\$1,347 62	
	<hr/>	<hr/>
	\$5,626 02	5,626 02
Am't invested in first-mortgage note.....	1,200 00	
Am't on hand uninvested, due estate.....	1,347 62	
	<hr/>	
Total assets.....	\$2,547 62	

20

Committee's Account.

Filed September 24, 1895.

Supreme Court, District of Columbia.

In re JOHN H. RIGHTER. Eq. No. 8904.

The estate of John H. Righter in account with Emma J. Frizzell, his committee, from — day of April, 1894, to the 16th day of Sept., 1895.

By am't on hand at last accounting, April, 1894.....	1,347.62	
“ am't of pension rec'd since last accounting.....	1,512.00	
“ am't of interest rec'd on former investments.....	60.00	
To investment made on real estate security vested in a first mortgage on a farm property held by A. A. Oursler and duly recorded in the land records of Mont. Co., Md.....	\$2,000.00	
Dated June 5th, 1895.		
Due June 5th, 1900.		
To expenses pertaining — said investment.....	19.00	
To board, care, & attention of infant son for 76 weeks, at \$6 per week.....	456.00	
To clothing furnished infant son, medical at- tendance, tuition fees at school, &c.....	123.00	
	<hr/> 2,598.00	2,919.62
21 Carried forward	\$2,598.00	2,919.62
To incidental expenses incurred in behalf of trust since April 1, 1894.....	\$64.00	
To commissions due com., at 5%.....	133.10	
To bal.....	124.52	
	<hr/> \$2,919.62	2,919.62

By bal. due estate Sept. 16th, 1895, 124.52.

STATE OF MARYLAND, }
Baltimore County, } ss :

On the 16th day of September, eighteen hundred and 95, before the subscriber, a justice of the peace in and for said county, personally appears Emma J. Frizzell and makes oath on the Holy Evangely of Almighty God that the annexed act is just and true, and that he hath not, directly or indirectly, received to her knowledge any part or parcel of the same as charged as due by such account or any security or satisfaction for the same.

Sworn before—

ALEX. W. HITCHCOCK,
Justice of the Peace.

Petition of U. S. to Intervene.

Filed October 19, 1898.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. Equity. No. 8904.

The petition of the United States of America, by Henry E. Davis, attorney of the United States in and for the District of Columbia, respectfully represents:

1. That one John H. Righter was confined in St. Elizabeth's asylum, a Government institution, since the 9th day of May, 1892, by the order of the honorable Secretary of War, under section 4842 of the Revised Statutes of the United States, he being a private in the U. S. Signal Corps, and that he received a pension of \$50 a month, which said pension was increased to the sum of \$72 a month on the 4th day of March, 1890, and by proceedings in the above cause Emma J. Frizzell was appointed committee on July 6, 1884.

2. That Mrs. Emma J. Frizzell, committee of the said Righter, drew his said pension for him; that notwithstanding the fact that she drew his pension the said committee has failed to pay to the United States the cost of maintenance and support of the said Righter at said asylum; that she has received large sums of money from the Government, to wit, sums of money aggregating about \$7,000; that the said committee has filed accounts of her trusts, which accounts are erroneous and contain exhorbitant charges for the maintenance of the infant child of said Righter, and also contain claims for expenses of the said committee as well as a commission charged by her.

23 3. That for board and medical treatment of the said John Righter there is now due from the said committee a large sum of money, to wit, the sum of \$2,220, being \$5 per week from the 4th day of March, 1890, to the 4th day of October, 1898.

Your petitioner avers that the accounts of the said committee, filed April 1, 1894, and September 2, 1895, are erroneous and contain statements other than are right and proper, and that your petitioner has such interest in said fund collected by the said committee as to give it the right to come into this court and ask that said accounts heretofore filed be disallowed, and that your petitioner be allowed to intervene in said cause and file exceptions thereto, and that an account be stated before the auditor of the court allowing your petitioner the claim made by it.

Wherefore, the premises considered, your petitioner prays:

1. That it may be allowed to intervene in this cause and file exceptions to the said accounts heretofore filed.

2. That a rule issue against said committee compelling her to show cause why she should not be decreed to pay the claim of the United States, and that your petitioner have such other and further relief as the nature of the cause may require.

THE UNITED STATES OF AMERICA,
By HENRY E. DAVIS, *Its Attorney.*

DISTRICT OF COLUMBIA, ss :

Henry E. Davis, being duly sworn, deposes and says that he is the attorney of the United States in and for the District of Columbia, and that he has read over the above petition filed on the part of the said United States, and that the facts therein stated upon
24 personal knowledge are true, and that those stated upon information and belief he believes to be true.

HENRY E. DAVIS.

Subscribed and sworn to before me this 19th day of October, A. D. 1898.

JOHN R. YOUNG, *Clerk*.

25 *Order Allowing U. S. to Intervene.*

Filed October 19, 1898.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. Equity. No. 8904.

Upon consideration of the petition of the United States of America, it is this 19th day of October ordered that said petitioner be, and is hereby, allowed to intervene in the above-entitled cause and contest the accounts heretofore filed and take such proceedings as the case may require.

W. S. COX, *J.*

26 *Rule to Show Cause.*

Filed October 21, 1898.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. Equity. No. 8904.

Upon consideration of the petition of the United States of America, it is this 19th day of October, 1898, ordered that the committee, Emma J. Frizzell, show cause on or before ten o'clock a. m., November 1st, 1898, in equity court No. 1, why the claim of the United States should not be adjudicated against her, and why she should not answer the petition, provided a notice of this order be served on the said Emma J. Frizzell or S. R. Bond, her solicitor of record, on or before the twenty-fifth day of October, 1898.

W. S. COX, *J.*

Marshal's Return.

Served copy of within order on within-named S. R. Bond, solicitor for Emma J. Frizzell, committee.

Oct. 20, 1898.

AULICK PALMER, *Marshal*.

27

Answer to Rule to Show Cause.

Filed November 27, 1899.

In the Supreme Court of the District of Columbia.

In the Matter of JOHN H. RIGHTER, Lunatic. Equity. No. 8904.

The answer of Emma J. Frizzell, committee of said John H. Righter, to the rule to show cause, passed herein October 29, 1898, respectfully shows to the court and states as follows:

First. I now reside in Baltimore county, Maryland.

No copy of said rule to show cause was ever served on me, and I had no knowledge of it until I was informed of it by a letter written to me under date of October 11, 1899, by my surety, L. F. Randolph, and which I received some days afterwards.

Mr. S. R. Bond had never been my attorney, nor had I ever seen him until I called on and retained him in this matter, on or about October 20, 1899.

My attorneys prior to that time had been Mr. Charles S. Moore, who died quite a number of years ago, and subsequently Messrs. Shepperd & Lavender, principally Mr. Shepperd, who advised and assisted in making up and filing my account in April, 1894, and who I supposed had attended to whatever was necessary to be done in connection with it.

Second. In regard to my failure to pay for the board and treatment of said John H. Righter at the Government Hospital for the Insane, I say the only bill therefor which was ever presented to me or of which I have any knowledge is the one which I received from Dr. W. W. Godding, superintendent, and which is hereto
28 attached. I was advised that it was not my duty to pay it, and wrote a letter to Dr. Godding, of which a copy is also hereto attached, and to which I received no reply, and since that time there has never been any demand or request for its payment except that made in the petition for a rule to show cause, of which I learned as above stated. Meanwhile I had invested \$3,200 of the funds which came into my hands in real-estate securities, as shown by my accounts filed, and have also supported and maintained said John H. Righter and his son, and have not sufficient funds not so invested to pay said bill; but if liable therefor I will pay the same as soon as I shall have funds as committee with which to do so, either from receipt of pension or from said investments. It cannot be, as represented in said petition, that the United States is entitled to be paid for the board of said John H. Righter at said asylum to October, 1898, for, upon Dr. Godding's advice, I took him therefrom in January, 1896, and have ever since paid for his board, clothing, and treatment, at first under arrangements with a private family, and subsequently and up to the present time in Spring Grove asylum, at Catonsville, Baltimore county, Maryland, under

arrangements with his brother, C. H. Righter, as to his maintenance, treatment, and care.

Third. In regard to the exceptions on behalf of the United States to certain charges in my accounts rendered, I say:

Said John H. Righter is my mother's brother, and has had no means other than his pension for the support of himself and infant son, Charles H. Righter.

When in 1886 the former committee of said John H. Righter was removed, for reasons appearing in the proceedings in this
29 matter, his brother, George C. Righter, then residing in Washington city, but who died in 1893, asked me if I would, if appointed, serve as committee, and especially if I would take the infant son, then about six years of age, and care for and rear him in my home, which was then in Carroll county, Maryland, the nearest post-office being Marriottsville, Howard county. I was then and am now a widow without children of my own, and considering our relationship and the importance of having him at once removed from the influence of Annie Righter, in whose custody he then was, but who was not his mother, he being the son of said John H. Righter by a former wife, I consented and undertook to do so.

When I received my appointment as committee said John H. Righter's pension certificate and his said son were both held by said Annie Righter. I consulted Mr. Jacobs, agent of the Pension Bureau and familiar with the matter, as to the best means of gaining possession of them, and he advised me to employ Charles S. Moore, a lawyer in Washington, and who had acted, so far as legal services were necessary, in the matter of my appointment and qualification.

I did so, and he took means to compel her to give up the boy and the certificate. He charged \$50 for his services and I paid him that sum, as charged in my account, and to which charge exception has been taken on the part of the United States, and attach his receipt for the same hereto.

I took the boy with me to Carroll county, and have boarded, clothed, and maintained him, kept him at school, paying for the necessary tuition, supplied him with needed books and spending money, paid doctors' bills, and cared for him the same as if he had been my own son.

30 The nearest public school in Carroll county was about three miles from my residence, so I sent him to a nearer one in Baltimore county, where I had to pay for his tuition and provide him with school books.

He was not a strong boy, either in mind or body, and, acting upon the best advice I could obtain, as well as my own best judgment, I placed him, in 1892, at the boarding school of Dr. Charles H. Waters, at Dawsonville, Montgomery county, Maryland, where he remained about six months, for which I paid him the amount charged therefor in my account, and also paid the sums therein charged for traveling expenses in taking him to and from said school and for the necessary outfit and to settle a difficulty in which he became in-

volved while there. The receipt which Dr. Waters gave me at the time was destroyed among my other papers, as hereinafter stated, and he has given me the receipt hereto attached in lieu thereof.

The charge of \$25 per month for his board, washing, mending, spending money, and general care while living with me is not more than a reasonable one.

The charges for clothing, medical attendance, and tuition fees and incidental expenses are as correct and accurate as I could keep an account of the same.

While said John H. Righter remained at the Government asylum I made several visits to him, and on each of them I took him such delicacies as he had asked for or seemed to need and had to pay my car fare to and from Washington and for my meals, &c., while there.

My first account was made up from papers which I then had with the advice and assistance of Mr. Shepperd, of the law firm of Shepperd & Lavender, who filed it in court and did not ask or
 31 suggest that the receipts and other papers which I then had should be filed with the account, and my second account filed was made up with the assistance of a business man in whom I had confidence and who did not suggest that any papers should be filed with it, or I should have filed the papers with said accounts.

I did not understand that after the accounts had been filed said papers were of any importance, and the most of them became lost or destroyed. I have made search for them, but have only been able to find the receipt of Charles S. Moore and that of Shepperd & Lavender, filed herewith, which I had kept among the papers relating to my appointment as committee.

Both of said accounts are just and correct, according to the best of my knowledge and belief.

EMMA J. FRIZZELL, *Com.*

S. R. BOND,
Sol'r for Com'tee.

DISTRICT OF COLUMBIA, ss:

Emma J. Frizzell came personally before me, and, being first duly sworn, deposes and says that she has read the answer by her above subscribed and knows the contents thereof, and that the facts therein stated upon her personal knowledge are true and those stated upon information and belief she believes to be true.

EMMA J. FRIZZELL.

Subscribed and sworn to before me this 27th day of November, 1899.

J. R. YOUNG, *Clerk*,
 By R. J. MEIGS, JR., *Ass't Clerk*.

32 W. W. Godding, M. D., superintendent.

GOVERNMENT HOSPITAL FOR THE INSANE,
WASHINGTON, D. C., *May 3d*, 1895.

Mrs. Emma J. Frizzell, com., Marriottsville, Howard Co., Md., to
the Government Hospital for the Insane, Dr.

Unpaid balance from last quarter for board and medical
treatment of John H. Righter from M'ch 4, '90, to June
30, '95, 277 6/7 weeks at \$5.00 per week..... 1,389.28

Law office of Chas. S. Moore, 456 La. avenue.

WASHINGTON, D. C., *Oct. 13th*, 1886.

Received of Mrs. Emma J. Frizzell fifty (\$50) dollars on account
and in full for services rendered in the matter of her appointment
as committee of John H. Righter.

CHAS. S. MOORE.

33 DAWSONVILLE, MONT. CO., MD.,
FAIRVIEW SEMINARY, *Jan.*, 1893.

Rec'd of Mrs. Emma J. Frizzell, com., payment in full for tuition,
board, &c., of Charley Righter, son of John H. Righter (insane).

CHARLES H. WATERS,
Principal, Fairview Seminary.

MARRIOTTSTVILLE, MD., *Aug.*, 1895.

Dr. W. W. Godding, supt. Gov. Hospital.

DEAR SIR: Having been lawfully appointed committee of John
H. Righter, insane pensioner, and at the same time being placed in
my charge his infant son, I assure you it is my sincere desire
to conduct this trust in a just and lawful manner, so please submit
your claim to the department and report to me the result. Of
course you should clearly state to the department the conditions
upon which this man was admitted into your hospital, also position
held, and place of residence at the time of his becoming insane, &c.
I will prepare a report and file same within sixty days, so the de-
partment may see clearly the exact standing of my trust. Request-
ing this may accompany your claim to the department,

Remain respectfully,
(Signed)

EMMA J. FRIZZELL, *Com.*

34 WASHINGTON, D. C., *Ap'l 20th*, 1894.

Received of Emma J. Frizzell twenty, \$— 00, dollars on acc't of
retainer in matter of filing an account in estate of Righter, insane.
\$20.00.

SHEPPERD & LAVENDER.

Agreed Statement of Case.

Filed March 20, 1901.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. Equity. No. 8904.

The following statement of facts in this case is agreed upon:

In March, 1878, the above-named John H. Righter enlisted as a first-class private in the United States Signal Corps, and while serving therein became insane, and on or about May 2, 1882, was committed by order of the Secretary of War to the Government Hospital for the Insane, commonly known as St. Elizabeth's, where he remained until taken therefrom by his present committee in January, 1896.

In July, 1882, he was discharged from the military service by reason of insanity, which has continued to the present time.

By his first wife, who died in November, 1879, he had one son, Charles H. Righter, born in that year, who is still living, and has been supported and educated by means of the pension granted to said John H. Righter, who has been without any other property or means of support.

35 In December, 1880, said John H. Righter married Annie Sheperd, who is still living, and who, February 28, 1884, was appointed by this court committee of said John H. Righter, but on July 6, 1886, she was removed and the present committee, Emma J. Frizzell, the neice of said lunatic, was appointed in her place.

On September 13, 1884, upon application of his committee, a pension of fifty dollars (\$50) per month, to date from July 8, 1882, was granted to said Righter, and the same was, from March 4, 1890, increased to seventy-two dollars (\$72) per month under the provisions of the act of Congress approved on that date.

The present committee, Emma J. Frizzell, on or about May, 1895, received the following bill, viz:

"W. W. Godding, M. D., superintendent Government Hospital for the Insane.

WASHINGTON, D. C., *May 3rd*, 1895.

Mrs. Emma J. Frizzeli, com., Marriottsville, Howard Co., Md., to the Government Hospital for the Insane, Dr.

Unpaid balance from last quarter for board and medical treatment of John H. Righter from M'ch 4, '90, to June 30, '95, 277 6/7 weeks at \$5.00 per week..... \$1,389.28 "

Being, as she declares, advised that it was not her duty to pay said bill, she wrote to Dr. Godding to the effect that she would prepare and file a report, so that the standing of her trust might be seen and a decision be obtained as to her liability to pay the same, and

36 she did not hear anything further from the matter until after a rule on her to show cause why she should not pay the same was issued upon petition of the United States filed in October, 1898, and to which she made answer.

Said answer shows that she took said John H. Righter from said hospital in January, 1896, and has, from his pension money, ever since paid for his board, clothing, and treatment, at first under arrangements with a private family and subsequently, up to the time of said answer, in Spring Grove asylum, at Catonsville, Baltimore county, Maryland, and has also paid for the support, clothing, and schooling of the said minor son of said lunatic from said pension money.

She further shows by said answer that she has also saved from said pension money and invested in real-estate securities the sum of \$3,200, and, aside from said sum, has not sufficient funds to pay said bill.

The aforesaid bill of the Government Hospital for the Insane, amounting to \$1,389.28, is still unpaid.

This cause now coming on for hearing upon said rule to show cause and said answer thereto, it is hereby stipulated and agreed by and on behalf of the United States and said Emma J. Frizzell, committee, that the same may be heard and determined upon the foregoing statement of facts as constituting the record for that purpose.

T. H. ANDERSON,
U. S. Dist. Att'y.

S. R. BOND,
Solicitor of Emma J. Frizzell, Committee.

March 18, 1901.

37 *Order Discharging Rule on Committee.*

Filed June 14, 1901.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. Equity. No. 8904.

This cause coming on to be heard upon the rule to show cause issued upon petition of the United States why the committee of said lunatic should not pay the bill presented for his board and treatment in the Government Hospital for the Insane, and her answer thereto, and upon an agreed statement of facts for the purpose of said hearing, filed herein, and having been argued by counsel for the United States and for said committee and submitted and duly considered, and the court finding that said committee is not liable for said board and treatment, it is this 14th day of June, 1901, ordered and adjudged that said rule to show cause be, and it is hereby, discharged.

A. B. HAGNER,
Asso. Justice.

38 *Order Granting Appeal from Order of June 14, 1901.*

Filed July 2, 1901.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. No. 8904. Equity.

Upon motion in open court of the attorney of the United States in and for the District of Columbia for the allowance of an appeal from the decree entered in this cause June 14, 1901, discharging the rule upon the committee to show cause, the said motion is hereby granted July 2, 1901.

A. B. HAGNER,
Asso. Justice.

39 *Directions to Clerk to Prepare Record.*

Filed July 11, 1901.

In the Supreme Court of the District of Columbia.

In re JOHN H. RIGHTER, Lunatic. Equity. No. 8904, Doc. 23.

The clerk will please include in the record of appeal in this cause the following papers and documents:

1. Feb. 27, 1884.—Bill filed.
2. July 6, 1886.—Appointment of Emma J. Frizzell committee.
3. Oct. 4, 1886.—Bond.
4. April 21, 1894.—Account of committee.
5. Sept. 24, 1895.—“ “ “
6. Oct. 19, 1898.—Intervener U. S. petition.
7. “ 19, “ “ “ allowed.
8. “ 19, “ “ “ claim of.
9. Nov. 27, 1899.—Answer of committee.
10. March 20, 1901.—Agreed statement of facts.
11. June 14, 1901.—Rule on committee discharged.
12. July 2, 1901.—Appeal allowed to Ct. Appeals.

ASHLEY M. GOULD,
U. S. Attorney.

40 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 39, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 8904, equity, *in re* John H. Righter,

lunatic, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, this 15th day of July,
Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1115. United States, appellant, vs. Emma J. Frizzell, committee of John H. Righter. Court of Appeals, District of Columbia. Filed Jul-17, 1901. Robert Willett, clerk.

OCT 1 - 1901

Robert Wilby
CLERK.

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1901.

No. 1115.

UNITED STATES, APPELLANT,

vs.

EMMA J. FRIZZELL, COMMITTEE OF JOHN H. RIGHTER,
APPELLEE.

BRIEF OF APPELLANT.

ASHLEY M. GOULD,
*United States Attorney for the
District of Columbia.*

PEYTON GORDON,
*Assistant United States Attorney for the
District of Columbia.*

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1901.

No. 1115.

UNITED STATES, APPELLANT,

vs.

EMMA J. FRIZZELL, COMMITTEE OF JOHN H. RIGHTER,
APPELLEE.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

In March, 1878, the above-named John H. Righter enlisted as a first-class private in the United States Signal Corps for a term of five years, and while serving therein became insane, and on or about May 2, 1882, was committed, by order of the Secretary of War, to the Government Hospital for the Insane, commonly known as St. Elizabeth's, where he remained until taken therefrom by his present committee in January, 1896.

In July, 1882, he was discharged from said military serv-

ice by reason of insanity, which has continued to the present time.

On February 27, 1884, Annie Righter, the wife of said John H. Righter, filed a petition in the supreme court of the District of Columbia, praying that she be appointed committee of said John H. Righter and authorized to receive and collect what money might be due him, with such other powers as pertain to such office; which was granted, and she was appointed committee.

In 1879 a son was born to said John H. Righter (Charles H. Righter), who is still living.

On September 13, 1884, upon application of his committee, a pension of fifty dollars per month, to date from July 8, 1882, was granted to said John H. Righter, and the same was from March 4, 1890, increased to seventy-two dollars (\$72) per month under the provisions of the act of Congress approved on that date.

On July 6, 1886, said Annie Righter was discharged from serving as committee as aforesaid, and Emma J. Frizzell, the appellee, was appointed committee in her stead and duly qualified.

On September 24, 1895, Emma J. Frizzell filed an account as committee of said John H. Righter.

On October 19, 1898, appellant filed a petition in said cause stating that, although said committee drew Righter's pension, she has failed to pay to the United States the cost of maintenance and support of said Righter at said asylum, asking leave to intervene and file exceptions to said account, and that a rule issue against said committee compelling her to show cause why she should not be decreed to pay the claim of the United States.

An order allowing the United States to intervene was filed October 19, 1898, and rule to show cause filed October 21, 1898; to which rule Emma J. Frizzell filed an answer November 27, 1899, and an order discharging rule on committee

was filed June 14, 1901; from which order an appeal was taken to this court July 2, 1901.

ASSIGNMENT OF ERROR.

1. The court below erred in discharging the rule on committee to show cause why the committee of said lunatic should not pay the bill presented for his board and treatment at the Government Hospital for the Insane.

2. The court below erred in not ordering the committee of said lunatic to pay the bill for board and treatment, &c., as prayed for in said petition of the United States.

ARGUMENT.

The questions to be argued are—

1. Whether insane persons belonging to the Army of the United States who are sent to the St. Elizabeth's Hospital for the Insane for treatment under section No. 4843 of the Revised Statutes of the United States are to be retained there at the expense of the Government after they have been discharged from the army or their term of enlistment has expired.

2. If such person, after having been discharged from the army is not indigent, whether he is not a patient at said hospital on the same terms and conditions as a regular pay-patient.

3. Whether the said John H. Righter is indigent.

4. Whether there is an implied contract to pay the Government for board and treatment of said lunatic while he was a patient at said hospital, after he was discharged from the army or the term of his enlistment had expired, during the period he was not indigent.

John H. Righter enlisted in the army in March, 1878, was committed to said hospital May 2, 1882, and was discharged from the military service in July, 1882, and remained at said hospital until 1896.

Righter was admitted to said hospital under section 4843 of the Revised Statutes of the United States, approved March 3, 1855 (volume 10, page 682), to wit:

“That the order of the Secretary of War, and that of the Secretary of the Navy, shall authorize the superintendent to receive insane persons *belonging* to the army and the navy, respectively, and keep them in custody till they are cured, or removed by the same authority which ordered their reception.”

It is admitted that John H. Righter was discharged from the military service in July, 1882, and that such proceedings were regular and formal, in which event, the instant he ceased to *belong* to the army, he was not subject to the orders of the Secretary of War, his status as a soldier no longer existed and the laws relative to “*persons belonging to the army*” were not applicable to him, and he remained at the hospital on the same terms as any other citizen or pay patient.

The important question is, What was Righter's real status?

A person who enlists in the army changes his status from that of a citizen to a soldier. He contracts with the Government, which contract may be enforced while such status exists and never afterwards, except by the party who has performed his part of the contract against the party who has failed to perform its part of the contract.

It being admitted that Righter was regularly discharged from the army by reason of insanity is also an admission that insanity is such a breach of or inability to carry out his contract as would enable the Government to discharge him for it.

It is true that such a breach of contract does not *ipso facto* operate as a discharge from the service or change his status from that of a soldier to that of a citizen, and that under section 4843 his admission to said hospital was proper, for the Government might waive such breach if it chose to do so; but it did not, and discharged said Righter from the service and changed his status from soldier to citizen, which was an insuperable barrier to his maintaining any rights he might have had while that status existed.

Righter's final discharge wholly extinguished, terminated, and obliterated his contract of enlistment.

In the case of *The United States vs. Grimley*, 137 U. S., pp. 150, 151, 152, the Supreme Court *held* that an enlistment is a contract between the soldier and the Government, which involves, *like marriage*, a change of his *status*, which cannot be thrown off by him at will, although he may violate his contract.

Mr. Justice Brewer, in delivering the opinion of the court says :

"This case involves a matter of contractual relation between the parties; and the law of contracts, as applicable thereto, is worthy of notice. The Government, as contracting party, offers contract and service. Grimley accepts such contract, declaring that he possesses all the qualifications prescribed in the Government's offer. * * * But in this contract *something more is involved* than the making of a contract whose breach exposes to an action for damages. *Enlistment* is a contract, but it is one of those contracts which changes the *status*; and where that is changed, no breach of contract destroys the new *status* or relieves from the obligations which its existence imposes.

"*Marriage* is a contract, but it is one which creates a *status*. Its contract obligations are *mutual* faithfulness, but a breach of those obligations does not destroy the *status* or change the relation of the parties to each other. The parties remain husband and wife, no matter what their conduct to each other—no matter how great their disregard of marital obligations. It is true that courts have power, under the statutes of most States, to terminate those contract obligations

and to put an end to the marital relations; but this is never done at the instance of the wrong-doer.

"The *injured party*, and the injured *party alone*, can obtain relief and a change of *status* by *judicial action*.

"Also a foreigner by naturalization enters into a new obligation. More than that, he thereby changes his status; he ceases to be an alien and becomes a citizen, and when that change is once accomplished no disloyalty on his part, no breach of obligation of citizenship, of *itself* destroys his citizenship.

"In other words, it is a general rule accompanying a change of *status* that when once accomplished it is not destroyed by the *mere* misconduct of one of the parties, and the *guilty* party cannot plead his own wrong as working a termination and destruction thereof. * * * By enlistment the *citizen* becomes a *soldier*.

"His *relations* to the State and the public are *changed*. He acquires a new *status*, with correlative rights and duties; and although he may violate his contract obligations, his *status* as a soldier is unchanged. He cannot of his own volition throw off the garment he has put on."

You will observe that in the light of this decision the Government pursued the only course open to it, of *terminating* and *dissolving* the contract between Righter and itself on his failure or inability to render the services he had contracted for.

As was well said by Mr. Justice Brewer in Grimley's case, only on account of a breach of contract on *claimant's* part was the Government entitled to have such a contract dissolved.

When the status of a soldier has been so judicially or legally terminated, dissolved, and ended; when his status has been so changed from that of a soldier to that of a citizen on account of his breach of contract, he cannot thereafter maintain any rights based upon that *status*, which has so ceased to exist, or grounded upon that *contract*, which has been so judicially or *legally terminated*, dissolved, and ended.

Mr. Justice Brewer in Grimley's case (*supra*) refers to the contract of marriage (which, like the contract of Grimley in that case and the contract of Righter in the case at bar, works a change of status) in order to illustrate the peculiar incidents of such contracts. Permit us, therefore, to follow his example and to briefly refer to the following principles, which are settled so far as the contract of marriage is concerned :

1. An interlocutory order for the payment of temporary alimony is not operative *after* a divorce *a vinculo matrimonii* has been obtained by the *wife* (Wood *vs.* Wood, 1 Lansing (N. Y.) R., 205).

(2.) *Permanent* alimony can only be adjudged in favor of the wife when she is the *prevailing* party (McIntire *vs.* McIntire, 80 Mo., 472).

(3.) When the court grants a divorce *a vinculo matrimonii* to the husband *on account of the offense* of the wife, it cannot require the husband to pay to the wife after such divorce anything for her support (Palmer *vs.* Palmer, 1 Paige Ch. (N. Y.) R., 277; Everett *vs.* Everett, 52 Cal., 383; Newman *vs.* Newman, 69 Ill., 169).

(4.) Alimony decreed to a wife in a divorce *a mensa et thoro* ceases in a subsequent decree of divorce *a vinculo matrimonii* (Blaker *vs.* Cooper, 7 S. & R. (Pa.), 501).

(5.) A decree of divorce *a vinculo matrimonii* obtained by the husband *on account of the misconduct of the wife* extinguishes all right on her part to insist on the performance of an antenuptial agreement to provide her a support as his widow. The marriage is by such decree *dissolved*, and all rights and obligations dependent on the existence of the marriage relation are extinguished, and she ceases to be his wife, and he is no longer legally or morally bound to sup-

port her or to carry into effect any provision previously intended for that purpose. His duty to support was *extinguished by the dissolution of the marriage*, and with it fell her right to demand the execution of the trust (Clark *vs.* Lott, 11 Ill., 113 to 115; Wilkinson *vs.* Gibson, L. R., Eq. 169, 170; Pratt *vs.* Jenner, L. R., 1 Ch. App. Cases, 494).

(6.) When once it has been established by the verdict of guilty by a jury that a wife has *broken her marriage vow* the whole ground and foundation for alimony *pendente lite* are gone. She is no doubt still a wife (until a divorce *a vinculo matrimonii*), *but she loses her right to alimony.*

Dunn *vs.* Dunn, 57 L. J. N. S., 59.

Now, the reason why alimony *pendente lite* which had been judicially decreed and which had accrued *prior* to a decree of absolute divorce becomes extinguished and uncollectible upon a dissolution of the marriage contract, is because it is an obligation *dependent* upon and *growing* out of that contract, and so cannot be enforced when the contract upon which it depends *has been judicially terminated* and has ceased to exist; and the reason why a wife has no right to alimony *pendente lite* or to *permanent* alimony after it is judicially or legally established that she has broken her marriage vow is because she can enforce no right under a contract which she has herself broken. Of course she is presumed innocent until proven guilty, and alimony *pendente lite* may be allowed her till her guilt is proved; but when the marriage contract has been *finally* dissolved because of her *breach* of it, and her guilt has been *legally established*, her right to collect sums previously decreed to her under that contract, and which she might have collected, but had failed to collect, *is forever gone.*

Righter's discharge in the case at bar, like an absolute divorce in the case of a wife, effectually terminates, dissolves, and ends the contract between him and the Government.

Rights which he had under certain statutes by reason of his contract with the Government and his status as a soldier—as a “person belonging to the army”—cannot be maintained when that contract ceases to exist, when that status has been changed from soldier to citizen, when he ceases to belong to the army. In other words, he cannot enforce any rights under a contract after said contract has gone out of existence. His rights under the contract are entirely defeated by his *own breach*—his inability to perform the contract.

2. By act approved July 13, 1866 (just eleven years after the passage of the act above referred to), volume 14, page 94, Revised Statutes of the United States, Congress provided for another class of people to be admitted to said hospital at the expense of the Government, to wit, “Indigent insane persons who have been in the same service (meaning army and navy) and been discharged therefrom on account of disability arising from such insanity.”

Richter was not entitled to board and treatment at said hospital under this act or any other act, except upon the same terms and conditions as any other pay patient, unless he was indigent.

3. Was said John H. Richter indigent?

Taking into consideration the facts set out in the record and Richter's station in life, no one would seriously contend that he was indigent. The record shows that Richter enlisted as a first-class private in the United States Signal Corps in 1878, at the pay usually allowed for such service. The following year a son was born, who is still living; that his wife was discharged from serving as committee July 6, 1886; that on September 13, 1884, a pension of \$50 per month was granted him, to date from July 8, 1882, and the same was increased from March 4, 1890, to \$72 per month.

Consider also that when Righter enlisted he was a young man, in perfect health and with all his faculties; he enlisted at the small pay offered by the Government; that he had a wife and minor child, and that since then his wife no longer receives her maintenance from his estate, and his son has been supported and educated out of his father's estate, and has now attained his majority, and is no longer dependent upon him for support; and the amounts awarded him as a pensioner.

To consider these facts, we say, is to concede that Righter was not indigent during the time for which charges were made for his maintenance at the Government hospital.

4. Whether there is an implied contract to pay the Government for board and treatment of said lunatic after his discharge from the army, as prayed in the petition of the appellant.

The superintendent of the Government Hospital for the Insane is a creature of statute, and the statute prescribes the terms and conditions upon which persons are to be admitted to said hospital and the superintendent is to receive them, and the person who is sent to the hospital for treatment comes only on the terms which the superintendent has authority to receive him.

If the insane patient is in the class of pay patients, it is the duty of the superintendent to collect for his board and treatment; and if it is the duty of the superintendent to collect, it is the duty of the committee of said insane person to pay. There is a contract by implication of law.

The decisions all agree that when necessities are supplied to a person who, by reason of disability, cannot himself make a contract, the law implies an obligation on the part of such person to pay for such necessities out of his own property; and the rule applies to a lunatic, whether so found or not, when the necessities supplied are suitable to his station in life.

Rhodes vs. Rhodes, 44 Chancery Division, p. 94.

Kay, J., delivering the opinion of the court, says :

“In my opinion the chief clerk’s certificate is perfectly right. This case raises a question of considerable interest and importance, namely, whether a man who supplies necessities for a lunatic can recover the costs of these necessities, either at law or in equity, as a creditor against the lunatic, on the ground of there being an implied contract on the part of the lunatic—a contract raised by implication of law—that there should be repayment of such costs. Now I confess that for my part I do not feel the difficulty. Take the case of an infant. He cannot enter into any binding contract at all; and yet a binding contract is implied on the part of the infant whose necessities are supplied, the contract being by implication of law. It is therefore not an answer to say that a lunatic cannot himself contract.

“An infant cannot contract so as to bind himself, yet the law does bind him by a contract for the supply of necessities”—

and quotes with approval Lord Justice Mellish, *In re Gibson* :

“A lunatic cannot contract for his maintenance, so whoever maintains him becomes a creditor by implied contract.”

Williams vs. Wentworth, 5 Beav., 325 :

“The law will raise an implied contract and give a valid demand or debt against the lunatic or his estate for monies expended for the necessary protection of his person and estate.”

Nelson vs. Duncumbe, 9 Beav., 211 :

“If a trustee be sued in chancery for an account and it appears that he has properly expended sums of money for the protection and safety, or for the maintenance and support of his *cestui que trust*, at a time when he, though adult, was incapable of taking care of himself, the court will allow him credit on account for such sums of money.”

Creagh vs. Tunstall, 98 Ala., 249 :

“Where the guardian neglects or refuses to supply the

ward with necessaries suitable to the latter's estate and condition, a stranger may supply his pressing wants and have the same made a charge against the trust fund in the hands of the guardian."

The court in the opinion says:

"And there is another remedy which the law furnishes *ex necessitate*. A neglected ward might be brought to want and suffering before judicial relief could be successfully invoked. In such case a stranger could supply pressing, present wants, and have the same made a charge against the trust fund in the hands of the guardian."

As Righter remained at said hospital not under a statute providing that he be maintained at the expense of the Government, and that the superintendent had not the right to keep him there except as a pay patient in the absence of such a statute, and that he was furnished with necessaries while there, in the light of the above decisions it matters not whether he was sent there by the Secretary of War, whether he went there alone, or whether his committee sent him there, the fact is, said committee, who was the committee both of the estate and person of said lunatic, permitted him to remain at said hospital. There is a contract by implication of law that his estate be liable to the Government for the necessaries furnished, and the committee should pay the amount prayed for in the petition of the appellant.

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